To

His Honour William Mortimer Clark,

Lieutenant-Governor of the Province of Ontario.

Sir:-

Pursuant to a commission of inquiry concerning certain charges against Charles Edward Whelihan, Esq., Registrar of Deeds for the Registry Division of the South Riding of Perth, to me directed and dated the 7th day of February A.D. 1906, I have the honour to report as follows:-

The said commission was received by me on the 16th day of February 1906, and I thereupon on the 17th day of February, notified the said Charles Edward Whelihan that the said commission was issued to me, whereupon I received a communication in reply thereto indicating that the Registrar would be pleased to attend at the time and place fixed for the inquiry.

Upon the 20th of February I issued and mailed a formal notice to the said Charles E. Whelihan appointing Monday the 26th day of February 1906 at the Town Hall, St. Marys, at eleven o'clock in the forenoon, to proceed with the inquiry upon the charges made against him. Due notice was also given to Mr. James W. Graham of St. Marys, Barrister, who had preferred the charges.

Pursuant to my appointment, I entered upon the duties devolving upon me at the time and place mentioned, to wit; on Monday the 26th day of February, 1906, and proceeded with the investigation. The said Whelihan appeared and was represented in the preliminaries by Mr. Leonard Harstone, Barrister, pending the arrival of Mr. J.J. Coughlin, Barrister of Stratford, who had been retained as counsel by Mr. Whelihan. Mr. Graham was represented by Mr. F.H. Thompson, Barrister of Mitchell, as his counsel.

The charge preferred against Mr. Whelihan was embodied in a letter addressed to the Honourable J.J. Foy, Attorney-General, and dated the 6th day of October, 1905, which letter is embodied in the evidence taken at pages 2 and 3, and was accepted by the Counsel representing both parties as sufficiently clear, and is as follows:- "Hon. J.J. Foy, Attorney-General, Parliament Buildings, Toronto, Ont. Dear Sir:- I wish to prefer a charge against Mr. Charles E. Whelihan, the Registrar of Deeds for South Perth. My charge against him is as follows:-

On Monday the 25th. day of September 1905, at the request of a Client I attended at the Registry Office for the purpose of making a search as to the title to a piece of land situate on the South side of Queen street in the Town of St Marys and owned by one William Oram of the City of London. The said William Oram had entered into an Agreement in writing with my client to sell the lands in question to my client.

At the time I made the search, the Registrar was informed by me that the lands in question had been purchased by a client of mine and that I was making the search for the purpose of preparing the necessary conveyance.

The same evening, namely, the 25th. September, Mr. Whelihan went to London and induced the said William Oram to enter into Agreement with him for the sale of the said lands to him the said Whelihan.

My complaint against Mr. Whelihan is concisely, that he used information obtained from me in his official capacity as Registrar of Deeds, for the purpose of defeating my client in obtaining the property in question; and that further, he the said Whelihan, after having obtained the said information, induced the said Oram to break his contract with my client and to enter into an Agreement with him the said Whelihan for the sale of the said lands. That the conduct of the said Whelihan is contrary to the Registry Act and the obligations imposed upon Public Officers, at the time they assume office.

I request that the charge be investigated and submit, if my charge is proven, that the said Whelihan is not a fit and proper person to occupy the responsible office of Registrar of Deeds and that further he should be dismissed from the office. Dated at St Marys the 6th. day of October I905.

Yours truly,

J.W. Graham. "

The said Charles E. Whelihan filed with the Department a letter addressed to A.J. Cartwright, Esq., Deputy Attorney-General of Ontario, and dated the I6th of October I905, in reply to the charges made by the said Graham, and that letter is put in evidence and marked as Exhibit No. II upon the said inquiry.

The operative language of the Commission directed me "To inquire into and report to our said Lieutenant-Governor upon any and all charges that have been made against the said Charles E. Whelihan, Esquire, Registrar of Deeds for the Registry Division of the South Riding of Perth, by any person or persons whatsoever concerning the administration of his office as said Registrar, or affecting his fitness to hold the said office."

The evidence at the inquiry was taken by Mr. William C. Coo of London, Official Court Stenographer for the County of Middlesex. The inquiry being proceeded with on the said 26th day of February, after the examination of witnesses, Arthur Sheldon and James W. Graham, a medical certificate of the illness of William Oram having been filed by consent, the hearing was adjourned to London to take the evidence of William Oram and others, when Mr. J.J. Coughlin appeared as Counsel for the said Whelihan, and William Oram, Elizabeth Oram his wife, and Lizzie Oram his niece were examined the same afternoon at London.

The inquiry was resumed on Tuesday the 27th of February, when an adjournment thereof was had until the following Saturday, when, after hearing further evidence and argument of Counsel, the inquiry was closed.

The evidence was taken in Shorthand, transcribed and was

received by me from the Official Stenographer on the 7th day of March instant, and after perusing the same, I beg to report as follows:-

That William Oram, a resident of London, owned a certain property in the Town of St Marys on the South side of Queen street.

That Henry Whitworth of St Marys was authorized by the said Oram to look for purchasers thereof.

That about the I3th, I4th or I5th of September I905, the said Whitworth negotiated with and offered to sell said property to Arthur Sheldon of the firm of Sheldon Bros., Livery men in St. Marys. Whitworth first asked $2200.00, then $2000.00 and there was no agreement.

That on the I8th of September Arthur Sheldon went to London and saw Mr. Oram, and made him an offer of $I550.00. Oram promised to write to him, and on the 2Ist of September he wrote a letter to Mr. Sheldon which was received by him on Saturday, the 23rd of September, marked as Exhibit I, which is as follows: "London, September 2I/05. Mr. Sheldon. Dear Sir:- Regarding our property in St. Marys, your price is satisfactory, and if you can find it convenient to see me, we can settle matters immediately. My health is such that it is impossible for me to go to St. Marys. The tenants of course will have to be notified by Mr. Whitworth. Hoping this will be satisfactory, I am, Yours,

William Orme, (L.O.) "

Mr. Orem admits that this letter was written for him by his niece under his instructions. He is a man of 73 years of age.

Sunday intervened and on Monday morning, the 25th of September, Mr. Sheldon left instructions for Mr. Graham, Barrister, the complainant, to go to the Registry Office and search the title. These instructions were left for Mr. Graham at his office during his absence, and being informed of the instructions he went to Mr. Sheldon. They talked it over, and Mr.

Sheldon personally directed him to search the title to the property in question. For this purpose Mr. Graham went to the Registry office on that afternoon about four o'clock, made different searches, amongst them the Lot in question, and requested the Registrar, Mr. Whelihan, the person charged, to dictate to him a description of the property in question for the purpose, as he told Mr. Whelihan, of preparing a conveyance to a client of his who had purchased it. This was between four o'clock and a quarter past four that afternoon, on the 25th of September, 1905. Mr. Whelihan, the Registrar, substantially admits all that Mr. Graham says on the above point at pages 95 and 96 of the evidence, and further admits that the search was made by himself personally in the Registry Office, and was an Official Act and was charged for as such. Mr. Whelihan at that time told Mr. Graham that some years ago his father had been negotiating for the purchase of the property in question, but the owner had held it at too high a figure, but he said nothing at that interview about either his brother or himself being in negotiation for the property. Mr. Whelihan then according to his own evidence, about five o'clock the same afternoon went and hunted up Mr. Henry Whitworth, Mr. Oram's agent as aforesaid, and arranged that they would go to London that afternoon on the 5.40 train, and see Mr. Oram, the owner, and make a binding agreement or close a deal with him for the property.

The evidence is that Mr. Whelihan had been negotiating for the property in question through the medium of his brother, Joseph Whelihan, as far back as the 19th or 20th of September, Mr. Whitworth then having approached Joseph Whelihan who said he would see his brother, Charles E. Whelihan, the Registrar, and talk it over, and the latter and Whitworth both say that on the morning of the 25th of September, 1905, between eight and nine o'clock, Charles E. Whelihan was driven by his brother Joseph up to Whitworth's house, and he not being at home, they

found him performing duties near the Methodist Church, and that Charles Whelihan and Whitworth negotiated for the property in question, Charles E. Whelihan alleging that he thought the bargain was practically closed verbally between him and Whitworth then and there at $1600.00, Whitworth thinking it was open. Whelihan asked Whitworth to go to the Registry Office that morning, and it was arranged that Whitworth should write by the first mail to Oram that the property was sold to Whelihan. Both Whelihan and Whitworth swear that the latter went to the Registry office that morning of the 25th of September; Whitworth's version is that he endeavored to get more than $1600.00 and being refused, the figure was left at that, and it was arranged between them that they would go to London when it was convenient at half an hours notice.

Mr. Whelihan says that it was a dull day in the office, when at noon he made up his mind to go that afternoon, arranged for a dinner at five o'clock, his usual hour being seven, and that he carried out that arrangement by looking up Whitworth after five o'clock and going to London with him.

That evening, being the 25th, they saw Oram at London, and an agreement was drawn out in his house by Mr. Whelihan, whereby the property was to be sold to Joseph and Charles Edward Whelihan at $1600.00

Mr. Graham in the meantime had prepared a Deed that afternoon from Oram and his wife to Sheldon Bros., and he and Mr. Sheldon went to London on the morning of the 26th of September, with the money, to carry out the purchase, when Mr. Oram refused to sign the Deed, alleging that he had the night before, entered into a binding agreement with Mr. Whelihan for the sale to him. Thereupon Sheldon Bros., issued a writ in the High Court against Mr. Oram for specific performance or in the alternative damages for breach of contract.

Afterwards Mr. Oram carried out his agreement with Whelihan and executed and delivered a Deed dated October 2nd, 1905, of the property in question, to Charles Edward Whelihan and Joseph

Whelihan in consideration of $1600.00, and the Deed was placed on record in the property Registry office in that behalf on the 22nd of October, 1905.

William Oram swears that if Mr. Whelihan had not appeared on the night of the 25th of September, he would have sold the property to Sheldon Bros., and executed the Deed on the morning of the 26th, when the same was presented to him by Mr. Graham and Mr. Sheldon at his residence in London.

It appears that both the Whelihans' and the Sheldons' were peculiarly interested in obtaining this property, Whelihans' owning property close by, and Sheldons' being tenants of property also adjoining, in which they had an established livery business.

There are a great many points of difference between the parties, and some points of suspicion (which have been relied upon by counsel in argument) and considerable divergence between evidence adduced at the inquiry, and statements made in statutory declarations filed, also between Mr. Whelihan's letter of the 16th of October to the Deputy Attorney-General, and the evidence given.

I do not think it necessary to go into details in elaboration of these matters in this report, but feel conscious that though minor, they have assisted in forming a conclusion.

I, therefore, find as follows:

That Sheldon Bros., through Arthur Sheldon were negotiating with Henry Whitworth for the purchase of the property in question as early as the 13th or 15th of September, 1905.

That Charles E. Whelihan was negotiating through his brother Joseph Whelihan on the 19th of September, 1905.

That Mr. Sheldon saw Mr. Oram at London about the 18th day of September 1905, made Oram an offer of $1550.00, and that Mr. Oram by Exhibit No. 1 had written on the 21st of September accepting that offer; that the same was received by Sheldon on the 23rd of September.

That on Monday the 25th of September, Sheldon instructed his solicitor to search the title and prepare the papers to carry

out the purchase.

That after four o'clock on the 25th of September, Mr. James W. Graham searched the title, obtained a description dictated by the Registrar, Charles E. Whelihan, and told him that he desired the description for the purpose of embodying it in a Deed to a client of his who had purchased the property, (this is admitted by Mr. Whelihan.); that at the time Mr. Whelihan, Registrar, told him that his father, the late Patrick Whelihan, had endeavored to purchase the property some fifteen years ago, that he had not then told Mr. Graham that he and his brother were in negotiation for it; that after Mr. Graham had left the Registry office that afternoon, and about five o'clock, the Registrar, Mr. Whelihan, went to Mr. Whitworth's house and arranged for him to go to London with him on the 5.05 train; that at that time neither Sheldon nor Whelihan had a binding agreement for the property with Oram, or Whitworth, the agent; that after reaching London and before entering Oram's house, Mr. Whelihan agreed to give Whitworth a commission of $10.00 whether the deal was carried out and he got the property or not; that Whitworth also got a commission from Oram his principal; that Whelihan paid him the $10.00 agreed upon; that Oram would have carried out the terms of his letter to Sheldon to convey the property whether legally bound to do so or not, and would have executed the Deed when Graham and Sheldon arrived there on the morning of the 26th of September had Whelihan not been there the night before.

That the letter, Exhibit 3, written by Whitworth, dated 25th of September, to Mr. Oram being as follows: "I expect to get an offer for your property to-day and will write you to-morrow. I must say that property is on the downward grade here. Hoping you are as well as you can expect.

Yours truly,

H. Whitworth.",

indicates that Whitworth had no intention of going to London that

night but intended to report the following day.

That there was no understanding at the eleven o'clock interview between Whitworth and Whelihan in the Registry office, on the 25th of September, that they would go to London to see Oram that night.

That the Registrar, Whelihan, did not make a move to procure Whitworth to go to London on the evening of the 25th, on the 5.40 train, until after Mr. Graham's search in the Registry office after four o'clock, and his communication to the Registrar that a client of his had purchased the property.

I cannot find that Sheldon ever had a valid legal contract; but as to that branch of the case, I find that Sheldon had a letter from Oram agreeing to accept a verbal offer made by Sheldon about the 19th of September, which would have been carried out on the morning of the 25th except for the deal with Whelihan the night before.

Mr. Graham also charges that "The conduct of the said Whelihan is contrary to the Registry Act and the obligations imposed upon Public Officers at the time they assume office."

I find nothing in the oath taken by the Registrar which has been contravened. I find nothing in the Registry Act to show that the conduct of the said Whelihan is contrary thereto so far as the duties of Registrar's office is concerned, but it was alleged by counsel for the prosecution that Mr. Whelihan had contravened section 25 of the Registry Act, chapter 136, R.S.O., which is as follows:- "If a Registrar in any manner misconducts himself in his office, or neglects to perform his duty in every respect as required of him by this Act, or commits, or suffers to be committed any undue or fraudulent practice in the execution thereof, then the said Registrar may at the discretion of the Lieutenant-Governor in Council be dismissed, and he shall moreover, together with his sureties so far as their covenants extend, be liable to pay all damages with full costs of suit to any person injured thereby, to be recovered by action

in the High Court," etc.

What has been alleged against the Registrar in this case, it is contended, constitutes misconduct of the Registrar, that the charge is not confined to the strict reading of the Registry Act, but extends over a far broader plane; that in any event what has been proven, was misconduct in a Public Officer. It was argued very ably by Mr. Coughlin that the Registrar after a service of some 22 or 24 years as Deputy and Registrar has not been charged with any other act of misconduct, and the argument was offered that even if the charge should be found to be proven, such a record would operate as a palliation of the offence, if offence it was. I regret I cannot accept such reasoning. If the acts proven constitute misconduct, the same if condoned would furnish a most pernicious example, being an invasion by a public officer of public and private rights to his own gain, and be at the same time utterly subversive of the public service.

I am also asked to report upon the Registrar's fitness to continue holding his office. There was only one charge preferred before me. It appears that he has been Deputy and Registrar for 22 or 24 years, and there has been no complaint against his conduct of the office, prior to the one lodged by Mr. Graham. I assume and believe that the Registrar has been a good public servant, and but for the charge made here, would be eminently qualified by his ability and experience to continue to hold the office. I am asked to report upon his fitness to do so. In other words as I understand the scope of the commission, I am asked to report whether or not he has rendered himself unfit to longer continue in the public service as Registrar, by this one act found against him, namely, that he hastened to go to London owing to the information given by Mr. Graham. He is a representative of the Government. He is a public officer administering a public trust. Has he used information obtained in that office from the public, and turned it to his own advantage? information communicated to him in a public office, a place

where the public are forced to go to search titles to obtain information that was absolutely necessary to protect the purchaser or intending purchaser? Was he himself the gainer by the use of that information communicated by a Solicitor acting for a purchaser? that is, has he become the gainer at the expense of the public? and if so was this misconduct under section 23 of the Registry Act? or under the said section did the act of the Registrar in moving quickly on account of what Graham told him constitute an undue or fraudulent practice? If so, has it impaired the Registrar's usefulness and shaken public confidence? I find specifically on the evidence that Whelihan Bros., had been for some days prior to Mr. Graham's visit on September 25th to the Registry office, in negotiation with Crum's agent for the purchase of the property in question. I also find on the evidence that Mr. Charles E. Whelihan, Registrar, would not have gone to London on the night of the 25th of September had it not been for the communication made to him after four o'clock on that afternoon, by Mr. James W. Graham, that he was asking the search of the description for the purpose of a conveyance to a client who had purchased the property. From the language of the commission, I apprehend that this is as far as I am expected to go in reporting upon the charge made against the Registrar, concerning the administration of his office, or affecting his fitness to hold the same.

I have now the honour to return the commission issued to me herein, along with the evidence taken upon the said inquiry, and the Exhibits filed thereon except exhibit 9, being the Deed from William Crum and his wife to Charles Edward and Joseph Whelihan, which by consent was not filed on the investigation.

I have appended to this my report, copies of the exhibits referred to, other than exhibits 6, 9 and 11, and the charge made by Mr. Graham against Mr. Whelihan will be found at page 2 of the evidence.

I have the honour to return the commission directed to me

the original letter of Mr. Graham in which the charge was made, and the evidence taken on the enquiry, duly certified, and all the original exhibits except the Deed from Oram to Mr. Theldhan.

I have the honour to remain,

Sir,

Your obedient servant,

Commissioner.

Dated at Listowel this I6th day of March, I906.

In the Matter of the Inquiry into Certain Charges made against Charles E. Whelihan, Registrar South Perth.

COPY OF EXHIBITS FILED ON SAID INQUIRY.

Ex. No. I.

London, Sept. 21, 05.

Mr. Cheldon,,

Dear Sir:-

Regarding our property in St. Marys, your price is satisfactory and if you can find it convenient to see me we can settle matters immediately.

My health is such that it is impossible for me to go to St. Marys.

The tenants of course will have to be notified by Mr. Whitworth.

Hoping this will be satisfactory I am, Yours - Wm. Orme.

(L.O)

Ex. No. 2.

Pt Lot I5 on the S. side Queen street in the town of St. Marys in James Ingersolle survey of Lot I8 in Con. I7 Blanshard described as follows commencing at N.W.C of said Lot I5 thence Southerly along the easterly limit of said Lot --- - feet thence easterly parallel to the northerly limit of said 46 feet thence northerly parallel to the easterly limit of said lot feet to the southerly limit of Queen street thence westerly along the said Southerly

limit of Queen street 46 feet to the place of commencement.

William Oram.

A.H. Lofft search	.25
Albert Cook,	.25
Wm. Oram	.25

Ex. No. 3.

St. Marys, Sept. 25th, 1905 .

Mr. Wm. Orome,

Dear Sir:-

I expect to get an offer for your property to-day and will report to you tomorrow. I must say property is on the downway grale here.

Hoping you are as well as you can expect.

Yours truly,

H. Whitworth.

Ex. No. 4.

St. Marys, Sep. 20 1905.

Mr. Wm. Orem.

Dear Sir:

Your letter received and in reply would say I think I know a party who is thinking about buying it. I saw him about it last Thursday he says he will see me again, he made me no offer but will see him again. Hoping you are some better,

Yours truly,

Henry Whitworth.

P.S.

P.S.

I never thought of buying it for myself. Have to much the way things are looking just now. H.W. (Over) As soon as I get an offer I shall report to you at once.

Ex. No. 5.

To All whom it may concern

This is to certify that Henry Whitworth of the Town of St Marys was duly appointed by me to sell property belonging to me in St Marys which property was afterwards sold by his agency to Whelihan Brothers of St Marys and for which service I paid him his commission.

Dated this 24th February 1906.

Witness

Ex. No. 7.

St Marys Sep 25 1905.

Mr. Wm. Orem.

Dear Sir

I expect to get an offer for your property today and will report to you tomorrow. I must say property is on the downway grade here.

Hoping you are as well as you can expect.

Yours truly,

H. Whitworth.

Ex. No. 8.

St Marys Sep 25 1905.

Mr. Wm Orem

Dear Sir

I expect to get an offer for your property today and will report to you tomorrow. I must say property is on the down-

ward garde here.

Hoping you are all well as you can expect.

Yours truly,

Henry Whitworth.

Ex. No. IO.

London,

Septr. 25 I905.

$I00.00

Received from Whelihan Bros. the sum of One hundred dollars, part payment for lands in St. Marys. said lands being part of lot fifteen (I5) on the South side of Queen St. . part of Lot I8 Con I7 of Blanshard 46 feet infront on Queen St by a depth of I00 ft together with a right of way to said lands from Peel Street, I2 ft wide, Whelihan Bros., to pay taxes on said lands for year I905. And pay balance of purchase money fifteen hundred dollars. Purchase price being Sixteen hundred dollars.

Balance of purchase money to be paid on 2nd October I905 when deed is to be given with dower barred.

William Orme,

Witness

Henry Whitworth.